IN THE HIGH COURT OF JHARKHAND AT RANCHI
Tax Appeal No. 102 of 2026

Principal Commissioner of Income Tax (Central), Patna, having his office at 3rd Floor, Central Revenue Building, Bir Chand Patel Marg, Patna, P.O. Patna, P.S. Kotwali, District Patna, Bihar through Tushar Dhawal Singh, aged about 52 years, son of Abhinandan Prasad Singh, having office at 3rd Floor Central Revenue Building, Bir Chand Patel Marg, Patna, P.O. Patna, P.S. Kotwali, District Patna, Bihar.

... ... **Appellant**

Versus

Maa Chinnamastika Cement & Ispat Pvt. Ltd., through its Director, having PAN-AADCM9547Q, having office at Beside Punjab National Bank, N.H. 33, Ramgarh Cantt., P.O. Barkakana, P.S. Barkakana O.P., District Ramgarh, Jharkhand, PIN 829103**….** **... Respondent**

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANOJ PRASAD

For the Appellant : Mr Kumar Vaibhav, Sr.SC
Ms Saudamini Gupta, Jr. SC
Mr Durgesh Agarwal, Advocate

For the Respondent :

Order No.04/ Dated: 03.11.2026
***Per* M.S. Sonak, C.J.**

1. Heard Mr Kumar Vaibhav, learned Sr. SC for the appellant.

2. On 28.10.2026, we condoned the delay in filing this appeal and admitted this appeal on the following substantials question of law:

> *"i. Whether the Ld. ITAT erred in law in quashing the assessment on the ground of non-issuance of notice under Section 143(2) of the Income-tax Act, 1961, Page 2 of 2 despite the Assessee having participated fully in the assessment proceedings without raising any objection at any stage prior to the second appeal?*

ii. Whether the Ld. ITAT erred in law in entertaining a belated technical objection regarding non-issuance of notice under Section 143(2) of the Income-tax Act, 1961, ignoring the statutory mandate of Section 292 BB of the Income-tax Act, 1961 and the doctrine of waiver/acquiescence arising from the assessee's conscious participation in proceedings?

iii. Whether the Ld. ITAT erred in law in setting aside the assessment solely on a procedural ground without recording any finding of prejudice to the Assessee and without adjudicating the additions on merits, thereby failing to exercise jurisdiction vested in it as the final fact-finding authority?

3. However, on 28th of October 2026 itself, naturally unknown to the learned counsel for the appellant or this Court, the Hon'ble Supreme Court in the case of ***Principal Commissioner of Income Tax, Bhubaneshwar Vs. Orissa Mining Corporation Ltd.*** reported in ***2026 INSC 1171*** ruled that a notice under Section 143(2) of the Income Tax Act, 1961 (said Act) is a *sine qua non* for commencing proceedings and the revenue is not absolved of its obligation to serve such notice even if the assessee requests that the earlier return of income filed under Section 139 of the Act be treated as return of income filed in response to a notice under Section 148 of the Act.

4. The operative portion of the Hon'ble Supreme Court's Judgment and order in ***Principal Commissioner of Income Tax, Bhubaneshwar (supra)*** is contained in paragraph No.23 and the same is transcribed below for the convenience of reference:

> *"23. In view of the above, we find no infirmity in the view taken by the Income Tax Appellate Tribunal, as affirmed by the High Court. The question of law raised are, thus, answered as under:*
>
> *(i) Section 292 BB of the Act does not preclude an Assessee from raising an objection in any proceedings*

under the Act regarding non issuance of a notice under Section 143 (2) of the Act, merely because the Assessee had appeared and cooperated during the reassessment proceedings without raising any objection with regard to non-issuance of the notice. and

(ii) The revenue is not absolved of its obligation to serve a notice under Section 143(2) of the Act even if the Assessee requests that the earlier Return of Income filed under Section 139 of the Act be treated as the Return of Income filed in response to a notice under Section 148 of the Act. and

(iii)Mere issuance of a letter by the Assessing Officer under Section 142(1) of the Act during the course of reassessment proceedings, requiring the Assessee to explain the grounds on which re-assessment of income was proposed, does not amount to sufficient compliance of the mandatory obligation to serve a notice under Section 143(2) of the Act."

5. In this case, admittedly, no notice under Section 143(2) of the said Act was issued to the assessee in course of the reassessment proceeding. The Hon'ble Supreme Court, in paragraphs 16, 17 and 18 has also held that mere participation of the assessee in the assessment proceedings, in the absence of a notice under Section 143(2) of the Act does not confer jurisdiction upon the assessing officer to frame an assessment under Section 143(3) of the said Act. Thus, even the argument of waiver arising out of the assessee's alleged conscious participation in the proceedings has been decided against the revenue. The Hon'ble Supreme Court has held the non-issue upon notice under Section 143(2), either by ignoring or otherwise the statutory mandate of Section 292BB cannot be filed as a mere technical objection but that it is a substantive objection that goes to the route of the assessment proceedings.

6. Given the above decision of the Hon'ble Supreme Court, we are satisfied that the substantial questions of law framed by us in our order dated 28.10.2026 will have to be decided against the revenue. We decide accordingly and dispose of this Tax Appeal without any order for costs.

(M. S. Sonak, C.J.)

(Manoj Prasad, J.)

November 3rd, 2026
BS/Madhav/-